

REMARKS

Claims 1-20 are pending.

In the final office action, claims 1-20 were rejected on the grounds of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 1-25 of co-pending U.S. application number 10/868,484.

A terminal disclaimer is submitted herewith to overcome the non-statutory obviousness-type double patenting rejection in view of co-pending U.S. application number 10/868,484, so reconsideration and withdrawal of the final rejection of claims 1-20 are respectfully requested.

In the final office action, claims 1-20 are finally rejected under 35 U.S.C. § 103(a) in view of the previously cited published U.S. Patent Publication Numbers US2006/0100912A1 to Kumar et al. and US2003/0009411A1 to Ram. It is also stated that the previously submitted Declaration of Prior Invention under 37 C.F.R. § 1.131 of Gary E. Peterson, filed on January 16, 2008, is allegedly ineffective to overcome the Kumar reference.

The applicant submits herewith a Supplemental Declaration of Prior Invention under 37 C.F.R. § 1.131 of Gary E. Peterson, as well as a Declaration of Robert P. Catalano, each of which clearly convey and establish the facts and circumstances demonstrating that the applicant Gary E. Peterson was in possession of the invention as claimed in the present invention, and as early as October 2002. The submitted Declarations clearly disclose each of the elements, steps, and features as defined by and recited in the pending claims, with reference to exhibits and attested dates and actions regarding each of the elements, steps, and features of the pending claims.

It is respectfully submitted that Kumar is not prior art to the present invention, since Kumar is a national phase application based on a PCT application having a PCT filing of December 16, 2003, which is in turn based on a provisional application 60/433,597, filed on December 16, 2002.

The Supplemental Declaration of Prior Invention under 37 C.F.R. § 1.131 of Gary E. Peterson, as well as a Declaration of Robert P. Catalano, attest to prior conception and invention by the applicant before December 16, 2002, which is the filing date of the provisional application 60/433,597 of Kumar, as well as due diligence to reduce the invention to practice between the invention prior to December 16, 2002 and the filing of the present application.

Accordingly, entry and consideration of the submitted Supplemental Declaration of Prior Invention under 37 C.F.R. § 1.131 of Gary E. Peterson, and the Declaration of Robert P. Catalano, are respectfully requested.

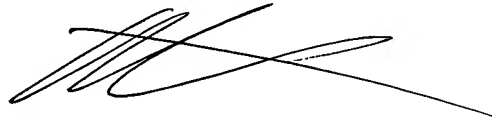
In view of the newly submitted Declarations, Kumar is not prior art to the present invention. Therefore, Kumar and Ram cannot be properly combined to disclose the present invention. Accordingly, no prima facie case of obviousness under 35 U.S.C. § 103(a) in view of Kumar and Ram has been established by the Examiner, so reconsideration and withdrawal of the final rejection of claims 1-20 in view of Kumar and Ram are respectfully requested.

Therefore, all pending claims 1-20 are patentable and in condition for allowance.

Entry and approval of the present response and supplemental evidence, and allowance of all pending claims are respectfully requested.

In case of any deficiencies in fees by the filing of the present amendment, the Commissioner is hereby authorized to charge such deficiencies in fees to Deposit Account Number 01-0035.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Anthony James Francis Natoli', with a long horizontal flourish extending to the right.

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